

REMARKS

Of claims 1-12 pending in this application, claims 1, 5 and 6 have been amended to correct several typographical errors. In addition, several typographical errors found in the specification have been corrected. Reconsideration of this application in view of this response is respectfully requested.

Claims 10-12 stand objected to, as the Examiner is not clear as to what Applicant means by having "varying degrees of version." Applicant submits that the term "varying degrees of version" is understood by one of ordinary skill in this art. A definition of the term "version" taken from Stedman's Medical Dictionary, Unabridged Lawyers' Edition, Copyright 1961, by W. H. Anderson Company and Jefferson Law Book Company, is included with this response. Pages 1636 and 1637 of this dictionary are submitted with this response as Attachment A. While the most common definition is given as "a displacement of the uterus, consisting in a tilting of the entire organ without bending upon itself", the term "version" also is defined as "inclination". In the orthopedic field, this term is commonly used to refer to position of a body part and includes anteversion (forward) and retroversion (backward), referring to different positions. In fact, the term retroversion is used in page 3, paragraph 43 of Scifert et al. Pub. No. 2003/0171816A1, the reference cited by the Examiner, to explain the correct

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positioning for the prosthesis. It is therefore submitted that this phrase is clear, and that the objection be withdrawn.

In claim 6, the word "slave" has been corrected to read - "sleeve - -. It is believed that this objection is now moot.

Claims 1, 4-6, and 10-12 stand rejected under 35 USC 102(e) as being anticipated by Scifert, et al. U.S. Pub. No. 2003/0171816A1. The Examiner states that Scifert et al. discloses a prosthesis comprising a sleeve (10) having a central opening, an outer surface, at least one channel (44 and 46), a collar (54) and a textured surface (50) capable of promoting bone tissue and a rod component (52) comprising an elongated shank (58) with at least one lobe (64 and 62). The interaction between the lobe and the channel, within the sleeve allow for a small amount of rotation. This rejection is respectfully transversed.

The Scifert, et al. publication teaches an intramedullary fixation device for use in securing a trial in the medullary canal of a bone to determine the offset and orientation of a prosthetic implant for replacement of a joint articulating surface of the bone. It is used so that accurate measurements can be made for fitting a prosthetic implant. The device is intended to be used to find an acceptable position for a prosthetic implant; it is removed after the proper position is located.

As the Scifert device is intended to be temporary, it does not contain an outer surface, sized to fit tightly within the bone, containing at least one section contacting the bone, said section having a textured surface to promote bone ingrowth, as required by claim 1 of the present invention. None of the surfaces of the Scifert device are configured to promote bone ingrowth, as the device is only temporary and is removed after the proper position for the prosthetic implant is located. The friction liner 50 is inserted into the trial stem sleeve 48 of body 14 to keep the height of trial stem 52 constant until the fixation portion 12 engages the trial stem 52. Liner 50 in no way contacts the bone and cannot have a textured surface to promote bone ingrowth. Bone ingrowth would render the Scifert device unworkable, as it is only used temporarily for adjustment purposes, and then removed.

In addition, it is submitted that the Scifert reference does not render claim 1 obvious. By placing a textured surface to promote bone ingrowth on any of the outer surfaces of the Scifert device would defeat its purpose, as it is intended that the Scifert device is removable, which would teach away from the present invention.

As claims 4-6 and 10-12 all ultimately depend from claim 1, these claims should be patentable if claim 1 is patentable.

Claims 2, 3, and 7-9 stand rejected under 35 USC 103 (a) as being unpatentable over Scifert et al. The Examiner states that Scifert et al. discloses the invention substantially as claimed, but does not disclose the structure limitations in these claims. This rejection is respectfully traversed.

As previously discussed, the Scifert et al. reference teaches a device which is intended to be temporary. Thus, it teaches away from the need for an outer surface having a section contacting the bone which has a textured surface to promote bone growth. As Scifert teaches a trial fixation device, it does not want any bone ingrowth. As such, it would not be an obvious matter of design choice to a person of ordinary skill in the art, as that person would not want such a surface, and there would not be any motivation to use an array of beads, as taught in claim 2, or an array of fibrillar wires, as taught in claim 3. Nor would there be any motivation to have the bone contacting portion of the sleeve contain a bone growth promoting material, as taught in claim 7, or that the material comprise BMP (claim 8) or platelet rich plasma (claim 9).

CONCLUSION

Applicant respectfully requests that this Response be entered by the Examiner, placing all pending claims in condition for allowance. Applicant submits that this response not raise new issues or necessitate an additional search of the art by the Examiner.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite the prosecution.

It is believed that no fee is due with the filing of this response, as no claims were added. If a fee is due, please charge the fee to Deposit Account No. 12-1677. If a fee is required for an extension of time under 37 CFR § 1.136 not accounted for, such an extension is requested and the fee should be charged to the aforementioned Deposit Account.

For the reasons given above, it is believed that all claims now contained in this application are in condition for allowance, and such favorable action is respectfully requested.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on NOVEMBER 18, 2004

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*A vocabulary of medicine and its allied sciences,
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including anatomical, bacteriological, chemical, dental, pharmacological, veterinary, and other special terms; a thorough discussion of medical etymology; anatomical terms completely revised according to the new nomenclature, Nomina Anatomica Parisiensia; pharmaceutical preparations official in the U. S., British, and International Pharmacopeias and the National Formulary; biographical sketches of figures in the history of medicine.

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Kümmell-V. disease, see under disease.

V.'s neuroma, see under neuroma.

vernine. An alkaloid derived from clover and other plants and also from ergot.

vernix [Mod. L.]. Varnish.

v. caseo'sa, the fatty substance, consisting of desquamated epithelial cells and sebaceous matter, which covers the skin of the fetus.

Vernon, William, English botanist, 17th century. Gave his name to *Vernonia*.

Verno'nia [W. Vernon]. A genus of plants of the family *Compositae*, the seeds of one species of which, *V. anthelmintica*, an East Indian plant, have vermifuge properties; the root of another species, *V. nigritiana*, of West Africa, is a cardiac poison resembling digitalis, and contains a glycoside, vernonin.

ver'onal. Barbitol.

v. sodium, barbitol sodium.

Veron'ica [Mediev. L. fr. name of St. Veronica]. A genus of plants of the family *Scrophulariaceae*.

V. beccabun'ga, brooklime or waterpimpernel; a European plant. Formerly used as a bitter tonic.

V. officina'lis, speedwell; Paul's betony. An astringent used as a tonic tea.

V. virgin'ica, leptandra.

verru'ca [L.]. Wart.

v. acumina'ta, fig-wart; condyloma acuminatum; venereal wart.

v. digita'ta, a wart in which the papillae project like fingers.

v. filifor'mis, a wart composed of greatly elongated papillae.

v. gyri hippocam'pi, one of the numerous small wartlike prominences on the convex surface of the gyrus hippocampi.

v. molluscifor'mis, condyloma.

v. necrogen'ica, lupus verrucosus.

v. perua'na, **v. peruvia'na**, a stage or form of Oroya fever or Carrion's disease; a specific endemic disease of the Peruvian Andes, marked by fever, rheumatic pains, progressive anemia, and an eruption of softish conical or pedunculated tumors of the size of a pea and larger; the disease lasts from a few weeks to several months, and has a fatality of from 8 to 50 per cent.

v. plana juveni'lis, a flat flesh-colored wart of small size. Seen especially on the face of the young.

v. plana seni'lis, keratosis senilis.

v. plantaris, plantar wart.

v. seni'lis, keratosis senilis.

v. simplex, **v. vulga'ris**, common wart.

verru'ciform [L. *verruca*, wart, + *forma*, form]. Wart-shaped.

verrucose, **verrucous** (ver'u-kos, ver'u-kus) [L. *verrucosus*]. Resembling a wart; wartlike elevations.

verruco'sis. A condition marked by the appearance of multiple warts.

lymphostatic v., mossy foot.

verru'ga. See verruca.

Versene. Trade name for the tetrasodium salt of ethylenediaminetetraacetic acid.

versicolor (vur-sik'o-lor) [L. particolor, fr. *verso*, to turn, twist, + *color*, color]. Marked by several shades of color.

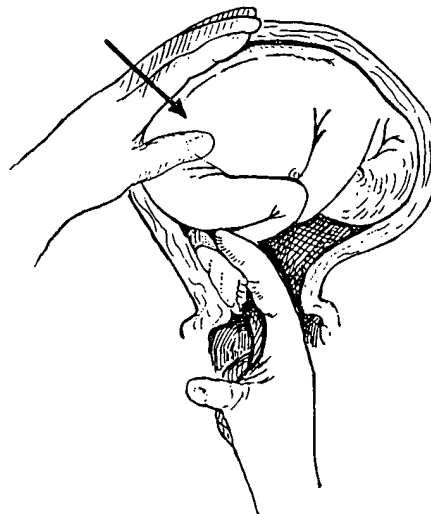
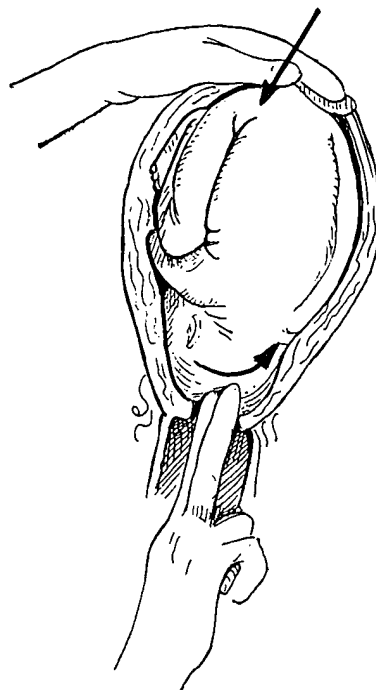
version (vur'shun) [L. *verto*, pp. *versus*, to turn. VERT-]. 1. A displacement of the entire organ without bending upon itself; the varieties of displacement are termed *anteversion*, forward, *retrover-*

sion, backward, and *lateroversion*, to one or the other side. 2. Change of position of the fetus in the womb, occurring spontaneously or effected by the manipulations of the accoucheur. 3. Inclination.

biman'ual or **bipo'lar v.**, performed by the hands acting upon both extremities of the fetus; it may be external or combined.

cephal'ic v., v. in which the fetus is turned so that the head presents.

combined v., bipolar v. by means of one hand in the vagina, the other on the abdominal wall.



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- external v.**, v. performed entirely by external manipulation.
- internal v.**, v. performed by means of one hand within the vagina.
- pelvic v.**, v. by means of which a transverse or oblique presentation is converted into a pelvic one by manipulating the buttocks of the fetus.
- podal'ic v.**, seizure of the foot of the fetus and turning so that this part presents. See fig., p. 1636.
- postural v.**, non-manual v. obtained by placing the mother in a certain position.
- spontaneous v.**, turning of the fetus effected by the contraction of the uterine muscle.
- ver'tebra**, gen. **ver'tebrae** [L., see VERT-]. One of the segments of the spinal column; in man there are 33 v., 7 cervical, 12 thoracic, 5 lumbar, 5 sacral (fused into one bone, the sacrum), and 4 coccygeal (fused into one bone, the coccyx).
- bas'ilar v.**, the lowest lumbar v.
- caudal vertebrae**, see tail.
- cranial v.**, a segment of the skull regarded as homologous with a spinal v.
- false v.**, v. spuria; any one of the fused vertebral segments of the sacrum or coccyx.
- lumbar vertebrae**, the five vertebrae between the thoracic v. and the sacrum.
- odon'toid v.**, axis.
- toothed v.**, axis.
- true v.**, v. vera; any one of the cervical, thoracic, or lumbar v.
- v. denta'ta**, axis.
- v. magna**, sacrum.
- v. prom'inens** [NA], the seventh cervical v.
- ver'tebrae spu'riae**, false v.; the fused vertebral segments of the sacrum and coccyx.
- ver'tebrae verae**, true v.; the cervical, thoracic, and lumbar v.
- ver'tebral**. Relating to a vertebra or the vertebrae.
- vertebra'rium** [Mod. L.]. The spinal column.
- vertebrate'rial**. Relating to a vertebra and an artery; denoting the foramen transversarium.
- Vertebra'ta** [L. *vertebratus*, jointed, fr. *vertebra*. VERT-]. A phylum of the animal kingdom composed of all having a spinal column; it includes the mammals, birds, reptiles, and fishes.
- ver'tebrate**. 1. Having a vertebral column. 2. An animal having vertebrae.
- notochordal v.**, one of the lower v.'s, as certain fishes, in which the notochord persists, unossified, in adult life.
- ver'tebrated**. Jointed; composed of segments arranged longitudinally, e.g., v. catheter, v. probe.
- vertebrec'tomy** [G. *ektomē*, excision]. Exsection of a vertebra.
- ver'tebroarte'rial**. Vertebrarterial.
- vertebrochondral** (vur'te-bro-kon'dral) [L. *vertebra* + G. *chondros*, cartilage]. Denoting the three false ribs (8th, 9th, and 10th), which are connected with the vertebrae at one extremity and the costal cartilages at the other, these cartilages not articulating directly with the sternum.
- ver'tebrocos'tal** [L. *costa*, rib]. 1. Costovertebral. 2. Vertebrochondral.
- vertebrofem'oral**. Relating to the vertebrae and the femur.
- vertebroil'iac**. Relating to the vertebrae and the ilium; iliolumbar; denoting a ligament.
- vertebrosa'ral**. Relating to the vertebrae and the sacrum; denoting the union between the last lumbar vertebra and the sacrum and the v. angle, or promontory of the sacrum, formed by the axes of the sacrum and the lumbar spine.
- ver'tebroster'nal**. Sternovertebral.
- vertex**, gen. **ver'ticis**, pl. **ver'tices** [L., see VERT-]. 1. The crown of the head; the topmost point of the vault of the skull, a landmark in craniometry. 2. In obstetrics, the portion of the fetal head bounded by the planes of the trachelobregmatic and biparietal diameters, with the lesser fontanelle at the apex.
- v. cordis**, apex cordis.
- ver'tical**. 1. Relating to the vertex, or crown of the head. 2. Perpendicular.
- v. dimension**, **v. overlap**, see Glossary of prosthodontic terms, under dentistry.
- ver'tices**. Plural of vertex.
- ver'ticil** [L. *verticillus*, the whirl of a spindle, dim. of *vertex*, a whirl]. A whorl; a collection of similar parts radiating from a common axis.
- verticil'late**. Whorled; disposed in the form of a verticil.
- Verticil'ium** [L. *verticillus*, the whirl of a spindle. VERT-]. A genus of hyphomycetous fungi.
- V. candela'brum**, a species found in decayed wood and, it is claimed, also in the excretions in scarlet fever.
- V. graph'ii**, a mold occasionally found in the meatus in cases of otitis externa.
- verticomen'tal**. Relating to the crown of the head and the chin; denoting a diameter in craniometry.
- vertiginous** (vur-tij'in-us). Relating to or suffering from vertigo.
- vertigo** (vur'ti-go, vur-ti'go) [L. *vertigo* (*vertigin-*), dizziness, fr. *verto*, to turn]. Dizziness; giddiness; a sensation of irregular or whirling motion, either of oneself (**subjective v.**) or of external objects (**objective v.**).
- auditory v.**, Ménière's disease.
- aural v.**, v. caused by disease of the internal ear or pressure of cerumen on the drum membrane.
- Charcot's v.**, laryngeal v.
- endem'ic paralyt'ic v.**, Gerlier's disease.
- epidemic v.**, v. of sudden onset with vomiting and nystagmus, and sometimes tinnitus, that attacks persons in the same locality. There may be paresis of the ocular muscles with diplopia, and dilated inactive pupils.
- gastric v.**, v. symptomatic of disease of the stomach.
- height v.**, dizziness experienced when looking down from a great height or in looking up a high building or cliff.
- horizontal v.**, dizziness experienced on lying down.
- labyrin'thine v.**, Ménière's disease.
- laryn'geal v.**, a paroxysmal neurosis characterized by attacks of coughing, with unusual sensations, as of tickling, in the throat, followed by a brief period of unconsciousness; more properly called laryngeal syncope.
- lateral v.**, dizziness caused by watching the telegraph poles and fences from the window of a railway carriage.
- ocular v.**, dizziness caused by refractive errors in the eye or imbalance of the extrinsic muscles.
- paralyzing v.**, Gerlier's disease.
- postural v.**, v. which occurs particularly in elderly people with change of position, usually from lying or sitting to standing position.

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